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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

WANDRA McMANUS

Petitioner,

v.

MCI COMMUNICATIONS CORPORATION, et al.

Respondents.

On Petition For A Writ of Certiorari To
The District of Columbia Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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January 4, 2001

62 pp

QUESTIONS PRESENTED

1. Whether it is repugnant to the Equal Protection Clause of the Constitution of the United States for the highest court of a State Court to resolve a material factual dispute -- without a jury -- concerning the maintenance and enforcement of a racist corporate culture which deprived a competent employee of continuing employment with a major corporate employer based solely on such an employee manifesting her African culture, African heritage and African consciousness in the workplace by wearing hairdos and clothes that reflected a African centric lifestyle?

2. Whether the highest state court's standardless affirmance of summary judgment as a matter of law against McManus in the disputed factual record concerning a racist corporate culture in the workplace is violative of McManus' constitutional rights to due process, equal protection and a trial by jury?

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I. The Constitution is violated when a state court resolves a material factual dispute -- without a jury -- concerning the maintenance and enforcement of a racist corporate culture which deprived an employee of continuing employment based solely on her personal appearance as manifested in her African culture, heritage and consciousness in the workplace by wearing hairdos and clothes that reflected her African centric lifestyle in the racist corporate culture of her workplace.

II The state court's affirmance of summary judgment as a matter of law against McManus in the disputed factual record of this case is violative of the Supreme Court's ruling in Reeves v. Sanderson Plumbing Products, Inc. and violative of McManus' constitutional rights to due process, equal protection and a trial by jury.

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PETITION FOR WRIT OF CERTIORARI

The petitioner Wandra McManus respectfully prays that a writ of certiorari issue to review the decision of the District of Columbia Court of Appeals entered in this proceeding on October 6, 2000. Appendix A.

OPINIONS BELOW

The judgment of the District of Columbia Court of Appeals is unpublished and appears in Appendix B hereto. The final orders or

judgments of the Superior Court of the District of Columbia dismissing Petitioner's Complaints appear in Appendix C and D.

JURISDICTION

The final decision of the District of Columbia Court of Appeal was entered on October 6, 2000 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth, Seventh and Fourteenth Amendments to the Constitution of the United States preserve to a litigant, such as McManus, the right to a trial by jury, to due process and equal protection of the law.

STATEMENT OF THE CASE

This case is about more than employment discrimination. It is a case about the proper roles of judges and juries in the resolutions of racial factual disputes between a major corporate giant and an African-American employee who was wrongfully terminated from her long-term employment because she exercised her constitutional right to express her personal appearance as manifested in her right to assert

an African heritage lifestyle in her hairdos and clothes worn in the workplace. The highest state court in the District of Columbia has failed McManus and deprived Petitioner of her right to a trial by jury by improperly resolving the genuine issues of material facts between the parties concerning the existence of a racist corporate culture in the workplace. Petitioner never had a fair chance to protect her right as an African-American in the racist corporate culture of her workplace.

The state courts misapplied Rule 56(c) and the well settled law setting forth the standard for awarding summary judgment as a matter of law. Adickes v. Kress & Co, 398 U.S. 144 (1970). The state court's decision improperly resolved factual issues on summary judgment involving MCI's and its employees' racial motives and state of mind in terminating McManus.

STATEMENT OF THE FACTS

McManus is an African-American citizen who was laid off from her long-term employment with MCI on August 15,

1997. McManus initially challenged her racially motivated termination by suing MCI, Jonelle Birney and Terri Sallay in McManus I. Near the end of discovery in McManus I, McManus learned of the unlawful role and actions of Bonnie Handy in her wrongful termination and failure to rehire based on racist corporate culture. Thus, McManus filed a second action (McManus II) suing MCI and Bonnie Handy for removing McManus from her former position and hiring someone outside her protected group to fill her vacant position based on MCI's racist corporate culture.

In total disregard of McManus' record evidence concerning the existence of MCI's racist corporate culture as supported by expert witnesses, and settled standards and law applicable to granting summary judgment, the trial judges dismissed McManus I and McManus II without a hearing by making conclusory and clearly erroneous statements in hand-written orders. On appeal of both erroneous and conclusory orders, the cases were consolidated and the District of Columbia

Court of Appeals affirmed the dismissal of McManus I & II by improperly invading the province of a jury and impermissibly substituted its arbitrary judgment concerning credibility determinations and the weight of the evidence for that of a jury. Petitioner's was blatantly deprived of her constitutional rights to a jury trial, to due process and equal protection of the law.

REASONS FOR GRANTING THE WRIT

It is now well settled that in an employment discrimination lawsuit, the standard for granting summary judgment "mirrors" the standard for judgment as a matter of law, such that "the inquiry under each is the same." Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097, 2110 (2000); Anderson v. Liberty Lobby, Inc., 477 U.S. 242,250-251(1986); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In ruling on a motion for summary judgment, a court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. at

2110. "Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." Id. "Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. Id. In other words, disputes as to an employer's motives or state of mind when there is record evidence of a racist corporate culture raises factual issues that precludes summary judgment. Cf. Sischo-Nownejad v. Merced Community College District, 934 F.2d 1104,1111(9th Cir. 1991) and William v. General Motors Corp., 187 F.3d 555,568(6th Cir. 1999).

Applying the above standards to this case, it is clear that MCI was not entitled as a matter of law to summary judgment against McManus. Here, the highest state court has applied its erroneous standard for establishing a prima facie case in Blackman v. Visiting Nurses Ass'n, 694 A.2d 865,868-69(D.C.1997) and O'Donnell v. Associated Gen. Contractors,

Inc., 645 A.2d 1084,1087(D.C.1994) to this case. The state court has applied a disparate treatment prima facie case standard that is onerous, rigid, mechanized, ritualistic, inflexible and inconsistent with controlling Supreme Court pronouncements in Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. at 2110; McDonnell Douglas Corp. v. Green, 411 U.S. 792,802(1973); Texas Dept. Of Community Affairs v. Burdine, 450 U.S. 248,253-54(1981); U.S. Postal Service Board of Gobernors v. Aikens, 460 U.S. 711,715(1983) and St. Mary's Honor Center v. Hicks, 113 S.Ct.2742,2753(1993)("The McDonnell Douglas methodology was "never intended to be rigid, mechanized, or ritualistic.")

The statement of the fourth element necessary to establish a prima facie case set forth in the state court's Blackman case, and relied upon by the highest state court, is erroneous and inconsistent with the above-mentioned Supreme Court precedents. For example, the state court's ruling and its Blackman case unfairly and erroneously requires a plaintiff in

establishing the fourth element of a prima facie case to establish "that her termination was based on the characteristic that placed her in the protected class." The citation to McDonnell Douglas Corp v. Green by the state court and the Blackman case for support of its erroneous, onerous and nearly impossible fourth element of a prima facie must be reviewed by this Court and corrected to avoid a manifest injustice. Petitioner, as a victim of unlawful discrimination, is being further victimized in court with such an unfair application of judicial authority.

MCMANUS' ESTABLISHED A PRIMA FACIE CASE OF RACE DISCRIMINATION

The state court misapprehended McManus' position for the establishment of her prima facie case of race discrimination. Contrary to the state court's assertion, McManus' basis for establishing a prima facie case is premised on the hiring of both Crystal Washington and Regla Perez. Specifically, McManus demonstrated that the hiring of Crystal Washington was an attempt to cover-up or mask MCI's unlawful discrimination

against McManus. Accordingly, the state court was in error in stating that McManus passed over "Ms. Washington and identifying Ms. Perez as appellant's successor. App. at 12.

The record evidence clearly indicated that Ms. Washington's leaving MCI was not voluntary but racially discriminatory and a ruse to create a short term pretext of a nondiscriminatory African-American successor before replacing and filling McManus's position with Perez, a person outside of McManus' protected class.[1]

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[1]In Connecticut v. Teal, the Supreme Court has recognized that an employer cannot discriminate against a person based on her race by pointing to the fact that it favorably treats other persons of the discriminated person's protected class. In footnote 5 of the Court of Appeals' decision much ado is made over whether McManus was fired and replaced or whether her position was eliminated and a new one created. McManus maintains that this is a factual dispute that goes to MCI's motive and state of mind and raises factual issues that must be resolved by a jury. Nevertheless, McManus has demonstrated a prima facie case of unlawful discrimination under both scenarios. For example, McManus showed that similarly situated employees were not treated equally. McManus comparator was Lugene Nign, a white employee. In the same memorandum that was used to have McManus terminated without the offer of another vacant position for which she was qualified, Bonnie Handy, with full

MCMANUS' ESTABLISHED A PRIMA FACIE CASE OF PERSONAL APPEARANCE DISCRIMINATION

The state court misapprehended McManus' intersectional discrimination argument for the establishment of her prima facie case of personal appearance and race discrimination. Contrary to the state court's assertion, McManus' basis for establishing a prima facie case of

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knowledge that McManus would accept a position with continuing employment at MCI if offered, blatantly refused to offer a position to McManus that was offered to a similarly situated white person, Lugene Nigh.(R.385 & 388). McManus was qualified to perform in the position that was offered to and rejected by Ms. Nigh. The Court ignores the blatant discrimination involved in offering a vacant position to a white person, hoping that she would accept it, while refusing to offer the same position to a similarly situated African-American employee out of racial fear that McManus would accept the position. In order to evade the blatant discrimination involved in not offering the position to McManus, Ms. Handy perjured herself by stating that she did not have the authority to hire or fire. A jury could have disbelieved this perjured explanation that was accepted by the Court with evidence in the record that it was without credence. McManus was prejudiced by the Court's improper and erroneous fact finding on this important credibility issue.

intersectional discrimination is premised on more than the comments made about her African heritage clothing and hairstyle. McManus' intersectional discrimination claims are predicated on the totality of the discriminatory circumstances surrounding her hostile work environment and the termination of her employment with MCI. See, Lam v. University of Hawaii, 40 F.3d 1551(9th Cir. 1994) and Judge v. Marsh, 649 F.Supp.770, 780(D.D.C.1986). The state court has overlooked crucial evidence demonstrating discrimination and pretext by stating that only Handy and Sally made the decision to let McManus go. This too is a factual dispute that should have been resolved by a jury. McManus' evidence showed that Sally told her on the day she was fired that Jonelle Birney really made the decision to terminate McManus. The state court improperly invaded the jury's province by deciding that the racial personal appearance statements made by Birney, Stewart and Walter for that matter, were complimentary rather than evidencing unlawful discrimination as snidely made.

In reaching its decision, the state court appears to have lost sight of the societal interests involved in enforcing anti-discrimination statutes such Title VII and the Human Rights Act. The Supreme Court addressed this issue in McDonnell Douglas v. Green, 411 U.S. at 801 as follows:

> "The broad, overriding interest, shared by employer, employee, and consumer, is efficient and trustworthy workmanship assured through fair and racially neutral employment and personnel decisions. In the implementation of such decisions, it is abundantly clear that Title VII tolerates no racial discrimination, subtle or otherwise."

See also, D.C. Code Sec.1-2501. It appears from the state court ruling that it is willing to tolerate subtle racial, personal appearance discrimination against McManus, based on a so-called "stray remark" doctrine or defense. However, based on the totality of the facts of this case, especially evidence of a racist corporate culture, the stray remark doctrine or defense is

inapplicable. Here, McManus' case is more analogous to the hostile work environment line of cases and the discriminatory remarks found in the following line of cases: Tomsic v. State Farm Mut. Auto. Ins. Co., 85 F.3d 1472, 1479(10th Cir. 1996); EEOC v. Pape Lift, Inc., 115 F.3d 676,683(9th Cir. 1997); Woodhouse v. Magnolia Hosp., 92 F3d 248, 254 (5th Cir.1996). Thus, the disputes as to MCI's and its officials' motives or state of mind in terminating McManus under the circumstances of this case raise genuine factual issues. See, Sischo-Nownejad v. Merced Community College District, 934 F.2d 1104,1111(9th Cir. 1991) and William v. General Motors Corp., 187 F.3d 555,568(6th Cir. 1999)(whether incidents alleged were so severe and pervasive as to constitute a hostile work environment).

Nexus Between Statements and Termination Decision

Contrary to the state court's decision, there is record evidence linking the discriminatory personal appearance statements to the decision to terminate McManus' job. In

McManus' initial brief, it was argued that because of "McManus' African styled hair and clothing, she was targeted by high ranking officials of MCI as not being a proper fit in the discriminatory corporate culture of MCI." In addition, "McManus viewed the snide racist remarks about her African style hair and dress as a subtle form of racial oppression and hostility to force her to abandon her African culture if she wanted to keep her job at MCI." This point is significant for highlighting the reasons that McManus was offered none of the other vacant administrative positions for which she was qualified at MCI before, during and after she was terminated from MCI. The discriminatory conduct and snide comments made about McManus's clothing and hairstyle were continuing.

Statements and Conduct were made in the Context of decision-making process

The snide comments were made in the context of the decision-making process as set forth by McManus in her initial brief at 33-37.

Subset of African-Americans

The state court has misapprehended McManus' intersection discrimination claim based on her race and personal appearance. The state court stated that "while there may be circumstances in which such a claim of discrimination would be cognizable, appellant has not proffered facts sufficient to support such a claim here . . . ." App. at 16. Contrary to the state court's conclusion, McManus demonstrated a nexus between the totality of racial actions and comments of MCI and the decision to terminate her employment. For example, McManus showed that she was qualified to serve in several vacant positions for which MCI was seeking employees. However, on each instance, MCI ultimately chose a person from outside of McManus' protected class to fill the vacant position. McManus' Initial Brief, pp. 30-37. Contrary to the state court's conclusion, the snide comments about McManus' hair and clothing did not occur in a vacuum - they were part of a continuing pattern of behavior that was designed to force

McManus to chose between abandoning an African heritage cultural style or to be unemployed. Forcing an unlawful and uncivilized choice upon an employee was found unlawful in Adams v. George W. Cochran, 597 A.2d 28 (D.C. 1991).

The state court misapprehended the true nature of McManus' challenge to the pattern of snide comments and behavior in MCI workplace. McManus was complaining about an unlawful denial of employment opportunities and a hostile environment created by, among other things, snide comments and behavior concerning her African heritage clothing and hairstyle. McManus demonstrated that the continuing loss of such employment opportunities, including the loss of her employment with MCI, was because of her choice of an African cultural lifestyle rather than a European cultural lifestyle. McManus maintains that this was unlawful under the DCHRA. The state court failed to apprehend that McManus was complaining that the moving of her desk and the denial of an equal opportunity to hold other positions besides the one with

the desk in front of the file cabinets was part of the continuing pattern of unlawful discrimination that she was experiencing at MCI. Contrary to the implications of the Court of Appeals' decision, continuing acts of unlawful discrimination can give rise to "a reasonable inference of discharge based on personal appearance discrimination." The state court confuses a ruling on summary judgment with a full trial on the merits. The state court failed to deal with the fact that a motion for summary judgment should be denied when the moving party fails to show its entitlement to judgment as a matter of law. Contrary to the state court's erroneous finding, it would not be necessary for MCI to replace McManus with a person of "pro-African sense of style in order to rebut a reasonable inference of discrimination." App at 17. However, MCI must articulate a nondiscriminatory reason for its decision to terminate McManus' employment, failure to rehire or recall her for a position to which she applied while ultimately replacing her with an employee from outside her protected class with similar

qualifications and less experience with MCI than McManus possessed. This factual dispute concerning McManus' termination was a jury issue that should not have been resolved as a matter of law by the state court.

McManus' Wrongful Discharge Claim

McManus' Interference with Prospective Advantage Claim

The state court has erroneously determined that an employee cannot maintain a suit for interference with prospective advantage where her expectancy is based on an at-will relationship. Contrary to the state court's determination, it was a jury question as to whether Birney procured McManus' termination based on her protected activities of wearing African heritage clothing and hairstyles. There is a serious credibility question as to who actually fired McManus. McManus has testified under oath that Sallay told her in a telephone conversation at home that Birney had her fired. Contrary to the state court's conclusion, McManus has established a prima facie

case of wrongful interference on this issue. This was a jury question.

McManus' Intentional Infliction of Emotional Distress Claim

Contrary to the state court's conclusion, a corporate employer requiring an African-American employee to abandon her African cultural heritage in order to retain her employment is outrageous, "extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." This was a jury question.

McManus' Failure to Rehire Claim

Contrary to the state court's finding, McManus sufficiently set forth facts that she applied and was qualified for the Budget Coordinator/Vendor Specialist position that was ultimately filled by Regla Perez. It was a factual dispute as to whether MCI refused to rehire or recall McManus to fill the vacant Budget Coordinator/Vendor Specialist position because of her race and African heritage personal appearance.

Let us not mince words, "[R]acism and hatred of blacks has been pervasive in our national history." Commonwealth of Pennsylvania v. Local Union No 542, 347 F.Supp. 268, 279(E.D.PA 1972). Despite laws to the contrary, each day since slavery, African-Americans have been forced to live and work under the domination of European cultural racism. This is a well-known part of the American Dilemma. European based values and beliefs about workplace clothing and hairstyle are enforced as the bedrock of a typical corporate cultural identity. At MCI, such shared European convictions are widely accepted notions of what is the appropriate dress and hairstyle that reflect what MCI stands for and is all about as a corporate entity. This approach to corporate management is inconsistent with not only the purpose and letter of the DCHRA, but with managing a diverse workplace, particularly one with African-Americans, such as McManus, who manifest a conscious African heritage and cultural lifestyle. Here, the corporate culture element of MCI that is being challenged is the corporate cultural racism

that requires adoption of European styled-clothing and hairstyle - rather than job qualifications - in order to keep ones' job with MCI. It is the combination or intersection of personal appearance and race and their reciprocal action in the workplace that the state court has misapprehended. Personal appearance is a cultural element when dealing with African style or European style clothing. Personal appearance is a racial element when dealing with African or European hairstyle. When European style clothing or hairstyle is preferred over African style clothing or hairstyle in a workplace, such as MCI, as more typically reflecting corporate America, we are dealing with a racist corporate culture. The racism that McManus is objecting to is MCI's corporate cultural racism that forces her to choose between wearing European style clothing and hairstyle over African style clothing and hairstyle in order to keep her job. McManus maintains that it is unlawful under the DCHRA and the constitution for MCI to force her to make this choice of an European over an African form of human existence to keep her

job. Cf. Adams v. George W. Cochran & Co., 597 A.2d 28(D.C.1991).

The state court overlooks the nexus between McManus' race and personal appearance and MCI's decision to terminate her employment. The state court ignored or misapprehended the evidence of MCI's corporate cultural racism and how it operated in MCI's workplace. In fact, the state court overlooked the record evidence of MCI's attempted destruction of McManus's African cultural values and lifestyle. To understand MCI's racially oppressive behavior, one must look beyond just the comments made about McManus' African style clothing and hairstyle. Instead, we must concentrate on the comments in the totality of language, dress, and corporate techniques that are impermissibly devaluing African culture in the workplace. The evidence of the contact between McManus and MCI's supervisory employees reveal snide criticism of McManus' African style clothing, hairstyle and racist way of speaking to, and interacting with, African-American employees,

i.e., "Fetch me some cookies" and placing her behind cabinets in the workplace; refusing to offer her vacant positions that she is qualified to fill while offering them to similarly situated white employees; flat-out lying about Plaintiff's job being eliminated in order to cover-up unlawful discrimination; refusing to hire Plaintiff as permanent executive secretary but constantly pulling Plaintiff away from her budget coordinator's job to perform as secretary; misrepresenting that plaintiff has loss enthusiasm for her job as a subterfuge to cover-up discrimination and retaliation simply because she has complained about being constantly pulled from her job; terminating plaintiff under the pretext that she does not possess a college degree while allowing a similarly situated white employee to retain her position with MCI without a college degree and ultimately replacing McManus in her position with a person without a degree, while denying the position to another Black woman (Crystal Washington) who had a degree and wanted the position.

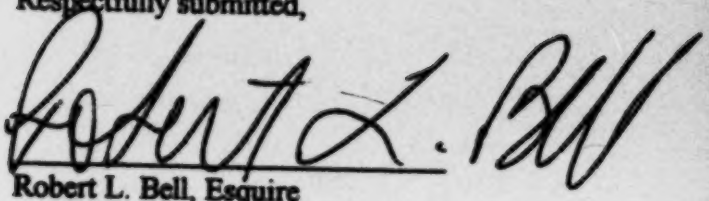
This case is about more than remarks. It is about deep-seated cultural and race discrimination over clothing, hairstyle, behavior and snide remarks. McManus' evidence showed more than mere stray remarks. Rather, this case is about an ongoing pattern of racial oppression against McManus as a person who manifests an African conscious style in her dress and hairstyle; and who opposed or protested racist snide remarks about the same in the workplace.

This was a case for the jury. Petitioner has been denied her constitutional right to a jury trial. Cf., Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. at 2110. Cf. Beacon Theaters, Inc. v. Westover, 359 U.S. 500 (1959).

CONCLUSION

For these foregoing reasons, a writ of certiorari should be issued to review the decision of the District of Columbia Court of Appeals dated April 13, 2000.

Respectfully submitted,



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APPENDICES

APPENDIX A

District of Columbia
Court of Appeals

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Court of Appeals

Nos. 98-CV-1268 and 98-CV-1504

WANDRA D. McMANUS,
Appellant,

CA9110-97

v.

MCI COMMUNICATIONS CORPORATION, ET AL.,
Appellees.

BEFORE: Wagner, Chief Judge; Terry, *Steadman, Schwelb, Farrell, Ruiz, **Reid, Glickman, and *Washington, Associate Judges; *Ferren, Senior Judge.

ORDER

On consideration of appellant's petition for rehearing and rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

**Associate Judge Reid has recused herself from these cases.

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APPENDIX B

Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.

District of Columbia Court of Appeals

Nos. 98-CV-1268 & 98-CV-1504

WANDRA MCMANUS, APPELLANT,

V.

MCI COMMUNICATIONS CORPORATION, *et al.*, APPELLEES.

Appeals from the Superior Court
of the District of Columbia

(Hon. Stephen F. Eilperin, Trial Judge)

(Argued November 3, 1999 Decided April 13, 2000)

Robert L. Bell, with whom *C. Vaughn Adams* was on the brief, for appellant.

Harvey D. Rumeld, with whom *Thomas F. O'Neil III* was on the brief, for appellees.

Before STEADMAN and WASHINGTON, *Associate Judges*, and FERREN, *Senior Judge*.

FERREN, *Senior Judge*: The questions presented in this employment discrimination case are: (1) whether the trial court erred in granting summary judgment to appellees MCI Communications Corporation, Jonelle Birney, and Terri Sallay on appellant's claims for discrimination based on race and personal appearance, in violation of the District of Columbia Human Rights Act (DCHRA), D.C.

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Code §§ 1-2501 to 1-2557 (1999 Repl.), and for wrongful discharge, interference with prospective advantage, and intentional infliction of emotional distress; and (2) whether the trial court erred in dismissing a second action, against MCI and another defendant, Bonnie Handy, filed by appellant while the summary judgment motion was pending in the first case. We affirm both trial court orders.

I.

The following facts, unless otherwise indicated, are undisputed. In 1986, MCI hired appellant Wandra McManus, an African-American woman, as a secretary. In May 1995, she became administrative assistant to appellee Jonelle Birney, a white woman, for several months after Birney had been named Vice President of the Public Relations (PR) Department. When Birney hired a permanent secretary, appellant was reassigned to the PR Department's Public Policy unit, managed at the time by Robert Stewart, a white male.

In June 1996, Birney approved appellant's request for a transfer to the newly created Business Operations Group as a budget coordinator, assigned to provide support to the PR Department. The PR Department continued to fund her position. In November 1996, appellee Bonnie Handy, Senior Manager of the Business Operations Group and a white woman, hired appellee Terri Sallay, an African-American woman, as Manager of Financial Operations. Sallay was assigned to provide financial and personnel support to the PR Department, and appellant was assigned to report to Sallay until appellant's employment was terminated in 1997. Another

African-American woman hired at that time, Roslyn Blake, was assigned (among other duties) to provide support to other, smaller departments, similar to the support Sallay was giving the PR Department. Both Sallay and Blake had accounting degrees.

During the period that appellant had been a budget coordinator, her former supervisor, Birney, had used her as a backup secretary in the PR Department during the frequent absences of Birney's secretary, Ruth Modlin. Appellant complained about this to Sallay, who conveyed the complaint to Birney. According to appellant, her situation improved somewhat after that, although she continued to be pulled away from her work "every once in a while."

As evidence of discriminatory animus, appellant also cites an occasion on which an employee of Birney asked appellant, through another employee, to "fetch" some cookies for a meeting. Additionally, in October 1995 – twenty months before the decision to terminate appellant's employment – while appellant was working in the PR Department's Public Policy unit, her manager, Stewart, replaced his African-American secretary with a white woman and moved his new secretary from a desk "behind the filing cabinets" to appellant's desk outside Stewart's office, after moving appellant to a desk behind the cabinets.

Appellant often came to work in African-styled attire and wore her hair with dreadlocks, braids, twists, and cornrows. She based her claim of personal appearance discrimination on comments – at unspecified times – by Stewart, Birney, and Frank Walter, a manager with no

authority over her. More specifically, Stewart remarked about appellant's appearance: "That is a pretty outfit. Oh, my, your earrings are interesting. Oh, you have a new hair style, I like your hair." Birney told appellant at least once that she liked appellant's clothing and hair: "I like the way you wear your hair up, because it makes your facial features look better." "Oh, what kind of hair style is this, how did they do this?" "You look like an African princess." Walter told appellant that her African styled dress would make nice pillows for a room in his house with African artifacts and pictures; and on another occasion he noted that she was starting a "trend" around the office of African-American women wearing their hair in African styles.

In June 1997, Handy and Sallay decided to eliminate appellant's position and replace it with a higher level job because, they said, Sallay had become overburdened; she was unable to delegate some of the more complex finance tasks to appellant. Handy and Sallay discussed the proposed termination with Maryann Adams and Eileen O'Brien of the Human Resources Department, and also met with Jonelle Birney to let her know of their intended action. On August 15, 1997, Handy and Sallay met with appellant to notify her that her employment was to be terminated. Appellant testified at her deposition that Sallay had told her that her job was being eliminated because the department was being realigned. They told her, she further testified, that she was eligible for rehire, that she could use the company's electronic bulletin board to search for other opportunities, and that she could contact Adams and O'Brien if she had questions or needed assistance in looking for another position. Later that

evening, Sallay called appellant at home. Appellant says, and Sallay disputes, that in the course of that telephone conversation Sallay told her that Birney had been responsible for her termination.

At about the time of appellant's job termination, Birney's secretary, Modlin, a white woman, also was let go, and another white woman, Lugene Nigh, was dismissed from the Public Policy Group and offered a lower level position in the same group.[1]

In August 1997, within a week after appellant's dismissal, MCI advertised a vacancy for a "Budget Coordinator / Staff Admin IV"; appellant's most recent position had been "Budget Coordinator / Staff Admin III." MCI's announcement stated a preference for an accounting or finance degree and included some duties that appellant had not been performing.[2] Appellant

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[1] Appellees cite a third termination that occurred in the same time period, that of Alan Garrett, a white male. Appellant disputes the relevance of Garrett's situation, because he was a manager in another part of the corporation. She also disputes that Modlin was fired, asserting that Modlin had been allowed to retire.

[2] Appellant described her duties as including processing check requests, tracking purchase orders, doing monthly accruals, reviewing variance reports, and updating the expense database; she further testified at deposition that she had a little experience with journal ledger entries, and that she had never performed variance analysis and did not work on annual operating budgets or capital budgets. The job posted on August 18 included processing invoices, updating the expense database, reviewing variance reports, assisting in the preparation of the

(continued...)

proffers that she applied for this position, and MCI replies that it has no record of any such application but that appellant would not have been considered for the position because she lacked the necessary qualifications. After appellant filed suit against MCI, the job was re-posted with the added requirement of a bachelor's degree in finance or accounting; appellant did not have a college degree. MCI had not budgeted funding for this position,[3] although Sallay said MCI would have found the money if the position had been filled.

In September 1997, the newly created position was offered to Trina Sebron, an African-American woman with a bachelor's degree in finance, who turned it down. In October 1997, MCI hired Crystal Washington, also African-American with a college degree in finance, as a temporary employee to perform the duties associated with the position; when she left after four months MCI hired an Hispanic woman, Regla Perez Pino, as a temporary employee. Perez had been classified as a "Vendor Specialist," a position which does not require a college degree. In January 1998, the Budget Coordinator posting was further revised, and in March 1998 the position was offered to Angela Fifer, an African-American woman with a degree in accounting, who turned it down.

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[2](...continued)
annual operating and capital budgets, and preparing journal entries.

[3] In her brief, appellant cites this fact as evidence that MCI did not intend to fill the new position and that MCI accordingly had advertised it solely to provide a pretext for her termination.

II.

In granting summary judgment, the trial court ruled: "plaintiff has failed to establish a prima facie case of race discrimination – her position was offered to two other African-American women before it was eliminated. Nor is there a prima facie case made out of personal appearance discrimination. Stewart & Walter played no part in her dismissal[,] and Birney's comments were complimentary and do not show any discriminatory animus. Beyond that MCI has shown that the reasons for plaintiff's dismissal were not pretextual. The remaining counts of subterfuge, wrongful discharge, interference with prospective advantage, and intentional infliction of emotional distress are frivolous for the reasons noted" in defendants' motion.

III.

We agree with the trial court that appellant failed to make out a *prima facie* case of race or personal appearance discrimination.[4] In order to survive appellees' summary judgment motion, appellant was required to show, with respect to each contention, that "(1) she

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[4] Appellant's complaint also included a claim for "subterfuge" under the DCHRA. The DCHRA's subterfuge provision makes it unlawful to "do any of the [prohibited] acts for any reason that would not have been asserted but for, wholly or partially, a discriminatory reason. . . ." D.C. Code § 1-2512 (b) (1999 Repl.). Because this provision presupposes a discriminatory act which is alleged to have been committed by subterfuge, appellant's claim under this heading necessarily fails upon the judgment against her on her claims for race and personal appearance discrimination.

belongs to a protected class; (2) that she was qualified for the job from which she was terminated; (3) that her termination occurred despite her employment qualifications; (4) and that her termination was based on the characteristic that placed her in the protected class." *Blackman v. Visiting Nurses Ass'n*, 694 A.2d 865, 868-69 (D.C. 1997) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). Under the fourth criterion, moreover, she was required to show that race or personal appearance was a substantial factor in the termination decision by demonstrating that: "(1) she was replaced by a person outside of her protected class, or if the position has remained vacant, that the employer has continued to solicit applications for the position; or (2) that other similarly situated employees . . . were not terminated but were instead treated more favorably." *Id.* at 871 (citing *O'Donnell v. Associated Gen. Contractors, Inc.*, 645 A.2d 1084, 1087 (D.C. 1994)). The requirement of a showing that similarly situated employees were treated more favorably is imposed when a plaintiff has not alleged that someone replaced her when she was terminated. *O'Donnell, supra*, 645 A.2d at 1088.

A.

As to her claim of racial discrimination, appellant contends that she belongs to a protected class, that she was qualified for the job she held, that she was fired nonetheless, that her position itself never had been eliminated, and that a person of a different race had filled

it.[5] If this were true, all elements of a *prima facie* case,

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[5] Solely for purposes of reviewing on summary judgment the legality of appellant's job termination, we accept her contention that she was fired and replaced, rather than reaching appellees' contention that her job had been eliminated. Appellees argue, to the contrary, that appellant's position had been eliminated and a new one created. If we were to conclude that the record unambiguously supported this contention, then appellant's required *prima facie* showing would be different; however, she still would be required to show circumstances giving rise to an inference of discrimination. *See Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981). In making a *prima facie* case of employment discrimination in the absence of an allegation that someone had replaced her in the same job, appellant would be required to show that the jobs of one or more persons who were not members of the protected class, and who had jobs similar to hers, had not been terminated. *Cf. O'Donnell, supra*, 645 A.2d at 1088. MCI identified three white employees who had been let go at the same time appellant was dismissed. Appellant argues, however, that the circumstances surrounding the termination of two of those employees make it inappropriate to consider them in conjunction with her own job termination. Even so, it is undisputed that the third employee, Lugene Nigh, a white female, had been let go at the same time appellant departed. Although Nigh had been offered another position in her group at MCI, it also is not disputed that her managers knew she would not accept the proffered position. Nigh's employment with MCI thus ended when her position was terminated, and appellant accordingly cannot show that a similarly situated MCI employee, not a member of her protected class, was not terminated. In any event, we think the wiser course is to disregard appellees' contentions in assessing appellant's *prima facie* case. *Cf. MacDonald v. Eastern Wyo. Mental Health Ctr.*, 941 F.2d 1115, 1119-21 (10th Cir. 1991) (placing issue of employee's qualification for position at pretext stage of inquiry by treating employer's contention that

(continued...)

including the "substantial factor" requirement of the fourth criterion, would have been satisfied. Appellant's argument, however, is premised on MCI's hiring of Regla Perez, the second temporary employee engaged to perform appellant's duties after her termination.[6] But the first person hired to perform appellant's duties was Crystal Washington, an African-American woman. Although Ms. Washington left MCI after several months, there is no proffered evidence that she had not been qualified for the job, that her leaving MCI had not been voluntary, or that her hiring had been a subterfuge to create, temporarily, an appearance of a nondiscriminatory African-American successor before replacing appellant with an employee outside her protected class. The record thus provides no basis for passing over Ms. Washington and identifying Ms. Perez as appellant's successor. Because appellant accordingly did not show that MCI replaced her with someone outside her protected class, she failed to establish a *prima facie* case of race discrimination.

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[5](...continued)
employee was "not qualified" as articulation of legitimate non-discriminatory reason rather than as negation of an essential element of employee's *prima facie* case).

[6] Appellant has singled out MCI's hiring of Perez as evidence of discrimination notwithstanding the fact that she was a temporary employee whom MCI did not identify as a permanent replacement for appellant. Appellant's argument appears to be premised on the fact that Perez remained in the temporary position throughout the period of discovery in the case.

B.

Appellant also did not present a *prima facie* case of discrimination based on personal appearance. None of the statements made about her personal appearance was attributable to either of the two supervisors, Handy or Sallay, who made the decision to let appellant go and notified her of that decision. Among those alleged to have made statements about appellant's personal appearance – Stewart, Walter, and Birney – only Birney is alleged to have been involved in the termination decision. But Birney's comments about appellant's appearance were facially complimentary (as were Stewart's and Walter's, for that matter) and thus do not give rise to a reasonable inference of discrimination unless proffered with evidence tending to show that, in reality, the apparent compliments actually were snidely made, implying discriminatory animus.

We turn to the case law to put appellant's proffered evidence of discrimination in the appropriate legal context. Decisions interpreting Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (1994), and the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 *et seq.* (1994), have required that, for evidence of discrimination, there must be a nexus between the alleged discriminatory statement and the challenged termination decision.[7] "Evidence of a supervisor's

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[7] This court often has looked to cases interpreting Title VII to aid in construing the D.C. Human Rights Act. *Arthur Young & Co. v. Sutherland*, 631 A.2d 354, 361 n.17 (D.C. 1993). We (continued...)

occasional or sporadic use of a slur directed at an employee's race, ethnicity, or national origin is generally not enough to sustain a claim under Title VII." *Hong v. Children's Mem. Hosp.*, 993 F.2d 1257, 1266 (7th Cir. 1993) (internal citations omitted). Indeed, "such remarks, when unrelated to the decisional process, are insufficient to demonstrate that the employer relied on illegitimate criteria, even when such statements were uttered by a decision maker." *Id.* Under the ADEA, as well, federal courts generally have held that isolated comments, unrelated to the challenged action, are insufficient to show discriminatory animus in termination decisions and do not survive motions for summary judgment or judgment notwithstanding the verdict. *See, e.g., Nesbit v. Pepsico, Inc.*, 994 F.2d 703, 705 (9th Cir. 1993) (no *prima facie* case where plaintiff's supervisor previously had made statement to plaintiff that "[w]e don't necessarily like grey hair," since comment was uttered in ambivalent manner and was not tied directly to plaintiff's job termination); *Cone v. Longmont United Hosp. Ass'n*, 14 F.3d 526, 531 (10th Cir. 1994) ("[i]solated comments, unrelated to the challenged action, are insufficient to show discriminatory animus in termination decisions" where CEO previously had made statement that hospital "needs some new young blood" and that "long-term employees have a diminishing return"); *Waggoner v. City of Garland*, 987 F.2d 1160, 1166 (5th Cir. 1993) (where

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[7](...continued)
also have recognized that DCHRA is analogous to the ADEA in some important respects. *East v. Graphic Arts Indus. Trust*, 718 A.2d 153 (D.C. 1998).

plaintiff's supervisor had commented that plaintiff was an "old fart," the court stated: "As we have held on several occasions, a mere 'stray remark' is insufficient to establish age discrimination."); *Phelps v. Yale Sec., Inc.*, 986 F.2d 1020, 1026 (6th Cir.), *cert. denied*, 510 U.S. 861 (1993) (statement made by plaintiff's supervisor about plaintiff's birthday one year before her job termination was too ambiguous to establish necessary inference of age discrimination, and was made too long before layoff to have influenced termination decision).[8]

In contrast, these same courts have held that summary judgment was not appropriate where the plaintiff established a sufficient nexus between the alleged remark and the challenged termination decision. *See, e.g., Tomsic v. State Farm Mut. Auto. Ins. Co.*, 85 F.3d 1472, 1479 (10th Cir. 1996) (sufficient nexus where supervisor's recommendation to terminate plaintiff "was clearly before the decision maker" at time supervisor made statements); *EEOC v. Pape Lift, Inc.*, 115 F.3d 676, 683 (9th Cir. 1997) (age-related comments made by plaintiff's supervisor in months before plaintiff's termination, and associated with attempts to transfer plaintiff to another position, were not merely "stray remarks"); *Woodhouse v. Magnolia Hosp.*, 92 F.3d 248, 254 (5th Cir. 1996) (rejecting employer's argument that statement by trustee of hospital that "[t]hey're gonna lay off those old people," made two weeks

[8] In *Cone*, *Waggoner*, and *Phelps*, the court assumed the existence of a *prima facie* case and held that the alleged discriminatory statements did not satisfy the plaintiff's burden of persuasion.

before reduction in force, was "vague" or "remote in time" and therefore "merely a stray remark").

In this case, there is no evidence linking the alleged statements about appellant's appearance to the decision to terminate appellant's job. Indeed, there is no evidence indicating when the comments were made, and there is no evidence that they were made in the context of the decision-making process. At most, the record confirms that the comments were "stray remarks" that do not reflect discriminatory animus in the decision to dismiss appellant from her job. Because no other facts were presented to support appellant's claim for personal appearance discrimination, the trial court did not err in granting summary judgment.

Appellant suggests, nonetheless, that because she was an African-American who displayed her heritage through her clothing and hairstyle, appellees discriminated against her based on the combination of her race and personal appearance. More specifically, we understand appellant to be arguing that, because of her choice of clothing and hairstyle, she represents a subset of African-Americans whose claim of discrimination based on race, coupled with personal appearance, cannot be defeated by hiring to replace her an African-American whose dress more typically reflects corporate America. While there may be circumstances in which such a claim of discrimination would be legally cognizable, appellant has not proffered facts sufficient to support such a claim here; there is no demonstrable nexus on this record between the comments allegedly made about her personal appearance and the decision to terminate her employment.

Let us assume, nonetheless, that a jury reasonably could infer that the ostensibly benign comments by Birney, Walters, and Stewart about appellant's appearance actually were snide, when viewed in conjunction with the decision to move appellant's desk to a less visible location, and with the eventual decision to terminate appellant's employment. Even so, any inference of discrimination based on this sequence of events – occurring as it did over a two-year period – would be too attenuated for a reasonable inference of discharge based on personal appearance discrimination. Not enough is proffered, with essential specificity, for this court to conclude that MCI would have had to replace appellant with a candidate who shared her pro-African sense of style in order to rebut a reasonable inference of discrimination. Because appellant has provided no other basis for an inference that MCI's replacement of her with an employee who dressed differently was indicative of discriminatory animus, we must reject this contention.

IV.

The trial court properly dismissed appellant's claim for wrongful discharge. It is undisputed that she was an "at will" employee. This court already has rejected the argument appellant now makes under *Carl v. Children's Hosp.*[9] that a public policy exception to the at-will doctrine applies to an alleged statutory violation. *See Freas v. Archer Servs., Inc.*, 716 A.2d 998, 1002 (D.C. 1998) ("there

[9] *Carl v. Children's Hosp.*, 702 A.2d 159 (D.C. 1997) (*en banc*) (holding that court may recognize additional public policy exceptions to at-will doctrine).

is no need to apply the *Carl* rationale because the legislative policy [in the statute allegedly violated] is explicit and may apply directly to [appellee's] alleged discharge of [appellant]"). Having previously concluded that MCI did not violate appellant's rights under the DCHRA, there is no room to make the argument again under *Carl*.

V.

This court has described "prospective advantage," in defining the tort of interference with prospective advantage, as "business expectancies, not grounded on present contractual relationships but which are commercially reasonable to anticipate, [and] are considered to be property." *Carr v. Brown*, 395 A.2d 79 (D.C. 1978). It is clear that, as an at-will employee, appellant did not have a contractual employment relationship she could use as the basis for a suit for tortuous interference with a contractual relationship. *See Bible Way Church v. Beards*, 680 A.2d 419, 432-33 (D.C. 1996). Appellant argues, nonetheless, that this claim is available because she had a long-term employment relationship and an expectancy of continuing employment relations with MCI.

This court never has held that an employee can maintain a suit for interference with prospective advantage where her expectancy was based on an at-will relationship, and we do not do so now. However, even were we to afford appellant contractual protections based on her alleged expectancy (which we are not willing to do), appellant still could not survive summary judgment on this record. She could not proceed against MCI because

it is axiomatic that an employer cannot interfere with its own contract. *See Sorrells v. Garfinckel's, et al.*, 565 A.2d 285, 290 (D.C. 1989) (citing *Press v. Howard Univ.*, 540 A.2d 733, 736 (D.C. 1988)). As to Sallay and Birney, "the law affords to a supervisor . . . a qualified privilege to act properly and justifiably toward a fellow employee and that employee's true employers – those who have the power to hire and fire." *Id.* at 291. "The defendant's employees acting within the scope of their employment are identified with the defendant . . . . so that they may ordinarily advise the defendant to breach his [or her] own contract without themselves incurring liability in tort." *Id.* (citing W. KEETON, PROSSER & KEETON ON THE LAW OF TORTS § 129, at 990 (5th Ed. 1984)). Appellant could survive a summary judgment motion on her claims against Sallay and Birney (if available) only if she produced facts that suggest that they "procure[d] a discharge of the plaintiff for an improper or illegal purpose." *See id.* (citing KEETON, *supra*, at 990 n.25 (citations omitted)). As discussed above in the context of appellant's discrimination claims, she has not made such a *prima facie* case.

VI.

To prevail on a claim for intentional infliction of emotional distress, appellant was required to prove that appellees engaged in extreme or outrageous conduct which intentionally or recklessly caused her severe emotional distress. *See Kerrigan v. Britches of Georgetowne, Inc.*, 705 A.2d 624, 627 (D.C. 1997). Appellant has alleged that appellees acted maliciously toward her and that she suffered severe emotional

distress as a result. She contends that racist conduct is clearly extreme and outrageous, and that the comments made about her appearance offended her personal dignity and were offensive to her heritage as an African-American woman.

The actions of MCI and the individual defendants do not rise to the level required to proceed with a claim for intentional infliction of emotional distress. Liability is imposed only for conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Homan v. Goyal*, 711 A.2d 812, 818 (D.C. 1998) (internal citations omitted). This court has refused to impose liability for conduct even more outrageous than that alleged by appellant. *See, e.g., Kerrigan, supra*, 705 A.2d at 627 (employer allegedly manufactured evidence to establish a claim of sexual harassment against plaintiff and then demoted him and leaked information to other employees); *see also Waldon v. Covington*, 415 A.2d 1070 (D.C. 1980) (employers' actions taken with aim to embarrass and then terminate plaintiff's employment). Moreover, appellant's argument that public policy concerns dictate resolution of this claim in her favor are unavailing; *see, e.g., Adams v. George W. Cochran & Co.*, 597 A.2d 28 (D.C. 1991) (discharge of employee who refused to disobey law by driving unsafe truck was not extreme and outrageous).

VII.

Appellant filed a second action against MCI (McManus II) while appellees' summary judgment motion in appellant's original complaint (McManus I) was pending.

The second complaint almost was identical to the one in McManus I, with a few differences. First, the individual defendant was different: the second suit named Bonnie Handy in place of Birney and Sallay. Second, McManus II alleged additional facts regarding MCI's failure to rehire appellant. The two cases asserted the same six legal claims, with the second complaint alleging an additional claim, for conspiracy. After the court entered summary judgment in McManus I, the trial court dismissed McManus II, ruling that res judicata barred the claims against MCI and that collateral estoppel precluded the claims against Handy.

Under the doctrine of res judicata, i.e., claim preclusion, "a final judgment on the merits . . . precludes relitigation in a subsequent proceeding of all issues arising out of the same cause of action between the same parties or their privies, whether or not the issues were raised in the first proceeding." *Carr v. Rose*, 701 A.2d 1065, 1070 (D.C. 1997). Thus, res judicata "prevent[s] the same parties from relitigation of not only those matters actually litigated but also those which might have been litigated in the first proceedings." *Stutsman v. Kaiser Found. Health Plan*, 546 A.2d 367, 369-70 (D.C. 1988) (citations and internal quotation marks omitted). "If there is a common nucleus of facts, then the actions arise out of the same cause of action." *Faulkner v. GEICO*, 618 A.2d 181, 183 (D.C. 1992).

Although appellant contends that she did not know the facts out of which McManus II arose until late in discovery during McManus I, it is undisputed that Handy – the new individual defendant in McManus II – was

present at appellant's job termination. In one of the earliest depositions, moreover, Sallay testified that Handy had "instigated" appellant's termination. As to the additional facts alleged relating to MCI's failure to rehire appellant, these were known to appellant during the pendency of McManus I, including MCI's hiring of Regla Perez as a vendor specialist.[10] The two cases accordingly arose out of the same common nucleus of facts; res judicata barred appellant from relitigating the action against MCI. *See Faulkner, supra*, 618 A.2d at 183.

Because Handy was not a party to the first suit, res judicata might not bar appellant's claims against her. *See Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 163-64 (D.C. 1992). Appellees contend, however, that collateral estoppel, i.e., issue preclusion, bars the McManus II complaint against Handy – as the trial court held in dismissing appellant's claims against her. Collateral estoppel "restricts a party in certain circumstances from relitigating issues or facts actually litigated and necessarily decided in an earlier proceeding."

---

[10] Although appellant raised, in McManus I, the circumstances of MCI's subsequent hiring practices as material to her claim of discrimination, she did not directly argue that MCI had an obligation to rehire her, and because she is estopped from raising that argument against MCI in McManus II, the trial court was correct in not reaching the merits of the argument as to that defendant. We note, however, that according to appellant's own testimony at deposition, Sallay offered appellant the use of the company's electronic bulletin board and personnel staff for help in looking for other opportunities within MCI. We are unable to discern any record basis for a ruling that MCI acted wrongfully as alleged.

Ringgold v. D.C. Dept. of Employment Servs., 531 A.2d 241, 243 n.3 (D.C. 1987) (citing *Montana v. United States*, 440 U.S. 147, 153 (1979), and RESTATEMENT (SECOND) OF JUDGMENTS § 27). At issue in McManus I was the liability of MCI, Birney, and Sallay for their actions in terminating appellant's employment. The only issue left to be litigated in McManus II, therefore, was the liability, if any, for Handy's actions implicated in the termination of appellant's employment. This issue was not "actually litigated and necessarily decided," *id.*, in McManus I.

We conclude, however, that the McManus II complaint fails to allege facts sufficient to make out a *prima facie* case against appellee Handy. Most of the questions of fact that bear on appellant's claims against Handy in McManus II have been litigated in McManus I, and appellant is precluded from relitigating those facts that were necessary to the court's judgment against her in that proceeding. *See id.* In McManus II, appellant alleges only two facts specific to actions taken by Handy: that she had offered a position to Lugene Nigh that Handy had not offered to appellant, and that Handy had written a memorandum that provided justification for terminating appellant's employment. Neither of these facts, however, if proved, would advance appellant's claims for violations of the District of Columbia Human Rights Act, since they are not probative of appellant's assertion that she was replaced by a person outside her protected class; and Handy is not alleged to have made any comments about appellant's personal appearance. Nor do these facts advance appellant's claim for wrongful discharge or for interference with prospective advantage, in the absence of a contract of employment. Appellant's claim of

intentional infliction of emotional distress also fails since, even with these additional facts, Handy's alleged conduct is not "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community," *see Homan, supra*, 711 A.2d at 818. Dismissal of appellant's claims against Handy, therefore, was correct.

Although McManus II includes claims for "failure to rehire or recall," appellant has not identified any basis for appellees' obligation to rehire or recall her, and we cannot divine any such ground that would not have arisen out of her other claims. Because appellant did not advance facts sufficient to sustain her other claims, her claim for "failure to rehire" also was appropriately dismissed.

Affirmed.

APPENDIX C

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

WANDRA McMANUS	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 98-CA005332
	)	
MCI COMMUNICATIONS CORPORATION and BONNIE HANDY	)	
	)	
	)	
	)	
Defendants	)	

ORDER

This matter having come before the Court upon Defendants' Motion to Dismiss, Or, In The Alternative For Summary Judgment, and the Plaintiff having been given the opportunity to respond, it is hereby,

ORDERED, that the Defendants' Motion is granted in its entirety, and it is,

FURTHER ORDERED, that the above-captioned case is dismissed with prejudice, as to each defendant.[1]

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[1]At the core of this case, and CA97-9110, is a claim of alleged wrongful discharge from employment. In McManus I, Judge Eilperin found this claim not to have been prima facie established, and the

IT IS SO ORDERED THIS 10th DAY OF October, 1998.

SIGNED IN CHAMBERS

DOCKETED OCT 16 1998
MAILED OCT 15 1998
[signed] Shellie L. Bowers

Copies to:

Harvey D. Rumeld
Associate Litigation Counsel
MCI Communications Corporation
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Robert L. Bell, Esq.
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Law Offices of Robert L. Bell
617 K Street, N.W.
Washington, D.C. 20001

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remaining "outgrowth" claims frivolous. Thus, it is eminently clear that res judicata applies to the present claim against MCI, as well as collateral estoppel. The latter doctrine also mandates dismissal of the present claims against Bonnie Handy. (Whose involvement herein was known to plaintiff in McManus I prior to Judge Eilperin ruling. (See Reply, p.2). Mutuality is not required (McLaughlin v. Bradlee, 256 US App. DC 119 (1986). Plaintiff has had her "bite at the apple". No more is required.

APPENDIX D

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Washington, D.C. 20001

WANDRA McMANUS
Plaintiff

vs. CA No. 97-9110

MCI COMMUNICATIONS CORP.
et al Defendant

ORDER

Upon consideration of the motion for summary judgment filed by defendants ~~and after hearing argument on behalf of all parties concerned~~, it is, by the Court, this 6 day of August, 1998,

ORDERED:

(1) That the motion be, and it is hereby, ☐ **GRANTED**

☐**DENIED**

(2) That plaintiff has failed to establish a prima facie case of race discrimination - her position was offered to 2 other African-American women before it was eliminated. Nor is there a prima facie case made out of personal appearance discrimination. Stewart &

Walter played no part in her dismissal and Birney's comments were complimenting and do not show any discriminatory animus.

Copies to:

[unsigned]
JUDGE

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Washington, D.C. 20001

WANDRA McMANUS
Plaintiff

vs. CA No. 97-9110

MCI COMMUNICATIONS CORP.,
et al Defendant

ORDER

~~Upon consideration of the motion _____ filed by _____ and after hearing argument on behalf of all parties concerned, it is, by the Court, this _____ day of _____, 19___,~~

~~ORDERED:~~

~~(1) That the motion be, and it is hereby, ☐ GRANTED ☐ DENIED~~

(2) ~~That~~ Beyond that MCI has shown that the reasons for plaintiff's dismissal were not pretextual. The remaining counts of subterfuge, wrongful discharge, interference with prospective advantage, and intentional infliction of emotional distress, are frivolous for the reasons noted in plaintiff's motion.

Copies to: Harvey Rumeld
Emmett McGee
Robert Bell

[signed] Stephen Eilperin
JUDGE

MAILED AUG 10 1998
DOCKETED AUG 10 1998